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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOHN W. REGER, as Trustee in
Bankruptcy, etc.,

Plaintiff and Respondent,

v.

JACKSON, DeMARCO, TIDUS &
PECKENPAUGH,

Defendant and Appellant.

G052477

(Super. Ct. No. 30-2015-00775712)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, David T.
McEachen, Judge. Affirmed.

Klinedinst, John D. Klinedinst, G. Dale Britton, Mark J. Goldsmith and
Amy V. Bianchini for Defendant and Appellant.

Sall Spencer Callas & Krueger, Robert K. Sall and Brandon N. Krueger for
Plaintiff and Respondent.

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Defendant Jackson, DeMarco, Tidus & Peckenpaugh (Jackson DeMarco) appeals from an order denying its joinder in a petition to compel arbitration filed by codefendants Glaser Weil Fink Howard Avchen & Shapiro LLP, Patricia L. Glaser, and Craig H. Marcus (collectively, Glaser Weil). Glaser Weil and Jackson DeMarco sought to compel plaintiff John W. Reger, as Chapter 7 Trustee of the Bankruptcy Estate of James C. Coxeter, to arbitrate Reger's claims in this legal malpractice action.

Glaser Weil represented Coxeter in earlier lawsuits brought by investors in a partnership Coxeter formed with his business partner, Robert Bisno. Bisno hired Glaser Weil at his own expense to jointly represent Bisno, Coxeter, and the partnership because the investors alleged Bisno had embezzled funds from the partnership and Coxeter denied any knowledge of the embezzlement. Coxeter separately hired Jackson DeMarco as his independent counsel to monitor Glaser Weil because of the potential conflicts of interest Glaser Weil faced in jointly representing all of the defendants in the investor lawsuits.

Glaser Weil petitioned to compel arbitration based on an arbitration provision in the firm's retainer agreement with Coxeter. Jackson DeMarco filed a notice of joinder without filing its own petition to compel arbitration because it did not have an arbitration agreement with Coxeter. The trial court denied both the petition and the joinder under Code of Civil Procedure section 1281.2, subdivision (c) (hereinafter, section 1281.2(c)), which grants the court discretion to deny arbitration in a dispute subject to an arbitration agreement when pending litigation with a third party creates the possibility of conflicting rulings on common factual or legal issues.¹ The court found the malpractice claims Reger alleged against Jackson DeMarco in this action constituted third-party litigation under section 1281.2(c). In doing so, the court rejected Jackson DeMarco's contention Reger was equitably estopped to oppose arbitration because Reger's claims against the two firms were inextricably intertwined and arose from Glaser

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All statutory references are to the Code of Civil Procedure.

Weil's representation of Coxeter under the Glaser Weil retainer agreement, which included an arbitration provision.

Jackson DeMarco contends the trial court erred in finding Reger was not equitably estopped, and should have granted both the petition to compel arbitration and the joinder. We disagree and affirm the trial court's order. In the arbitration context, equitable estoppel applies only when a signatory asserts claims against a nonsignatory that are dependent upon, founded in, or inextricably intertwined with the contractual obligations of the agreement containing the arbitration provision; merely referring to or acknowledging the agreement is not sufficient. Reger's claims against Jackson DeMarco are based on the separate and independent duties that firm owed Coxeter. Reger makes no effort to enforce the Glaser Weil retainer agreement against Jackson DeMarco and in no way relies on that agreement as a basis for his claims against Jackson DeMarco.

Finally, Jackson DeMarco contends the Federal Arbitration Act (9 U.S.C. § 1, et seq.; FAA) governs the petition to compel arbitration and joinder. Jackson DeMarco, however, forfeited this contention because neither it nor Glaser Weil argued in the trial court that the FAA applied. Moreover, Jackson DeMarco failed to meet its burden to show the FAA applied by presenting evidence establishing Glaser Weil's retainer agreement and its arbitration provision had a substantial relationship to interstate commerce.

I

FACTS AND PROCEDURAL HISTORY

In the early 1990's, Coxeter retained Glaser Weil partner Stanley Heyman to represent him on various tax and estate planning matters. In approximately 1998, Heyman left Glaser Weil and joined Jackson DeMarco, which thereafter represented Coxeter on various tax, estate planning, and other matters.

Coxeter and Bisno were business partners who formed two limited partnerships and solicited investors for those partnerships during the 1980's. Bisno embezzled funds from one of these partnerships without Coxeter's knowledge or participation. In the mid-2000's, several investors filed lawsuits against Coxeter, Bisno, and the partnerships based on Bisno's embezzlement.

In May 2006, Bisno at his own expense retained Glaser Weil to jointly represent him, Coxeter, and the partnerships in the investor lawsuits. A month later, Coxeter entered into a retainer agreement with Glaser Weil confirming it would represent him in the investor lawsuits and that Bisno would pay all attorney fees and costs. That agreement included an arbitration provision requiring Coxeter and Glaser Weil to arbitrate any disputes arising from Glaser Weil's representation. At the same time, Coxeter signed a separate agreement waiving any actual and potential conflicts of interest arising out of Glaser Weil's joint representation of Bisno, Coxeter, and the partnerships.

Coxeter also retained Jackson DeMarco to ensure Glaser Weil properly represented him because of the potential conflicting interests created by Glaser Weil's joint representation of Coxeter, Bisno, and the partnerships. Jackson DeMarco served in an "advisory role" concerning the investor lawsuits by "consult[ing] regarding Glaser Weil's representation, monitoring hearings, filings, depositions, motions and communications . . . as well as monitoring the representation, actions, prospective actions and strategy employed by [Glaser Weil]." In its retainer agreement with Coxeter, Glaser Weil acknowledged Coxeter had retained Jackson DeMarco as independent counsel and it agreed to keep Jackson DeMarco "regularly informed on the status of the litigation." Jackson DeMarco did not appear as counsel of record in the investor lawsuits. Moreover, Jackson DeMarco and Coxeter did not enter into a written retainer agreement, nor did they have an arbitration agreement governing any dispute.

The claims of a few investors entitled to trial preference were tried in November 2006, with Glaser Weil representing Coxeter, Bisno, and the partnerships. A

lawyer from Jackson DeMarco attended the trial and provided independent advice to Coxeter, but did not participate in the trial. The jury returned a verdict for the plaintiffs, finding Coxeter jointly and severally liable for Bisno's embezzlement and awarding the plaintiffs compound prejudgment interest on the embezzled funds.

In July 2007, one of the remaining investor plaintiffs served a section 998 offer to settle his claims against Coxeter for \$1 million. Glaser Weil informed Jackson DeMarco, but both firms allowed the offer to expire. Instead, at Bisno's direction, Glaser Weil served a separate offer to compromise the plaintiff's claims against all the defendants for \$1 million. The plaintiff rejected the offer.

In December 2008, Glaser Weil withdrew as counsel for all parties in the investor lawsuits, and Jackson DeMarco became Coxeter's counsel of record. Coxeter entered into a written retainer agreement with Jackson DeMarco regarding this representation, but that agreement did not include an arbitration provision. Jackson DeMarco thereafter settled the claims of the remaining investor plaintiffs except the plaintiff who made the section 998 settlement offer. That case went to trial in July 2009. The trial court ruled Coxeter was collaterally estopped to relitigate certain issues decided during the previous trial, including the availability of compound prejudgment interest. Based on the trial court's ruling, the jury returned a verdict against Coxeter for more than \$1.4 million.

Coxeter was unable to pay this judgment and filed for bankruptcy protection. The bankruptcy court appointed Reger as the trustee for Coxeter's Chapter 7 bankruptcy estate, and in March 2015, Reger filed this action on Coxeter's behalf against Jackson DeMarco and Glaser Weil. Reger alleged claims for legal malpractice and breach of fiduciary duty against all defendants. Reger alleged Glaser Weil and Jackson DeMarco failed to adequately identify and disclose all the conflicting interests that arose from Glaser Weil's joint representation of Coxeter, Bisno, and the partnerships, failed to assert defenses available to Coxeter based on his status as an innocent partner who was

unaware of Bisno's embezzlement, failed to properly oppose and make an adequate record to challenge the trial court's award of compound prejudgment interest, failed to properly advise Coxeter about the section 998 settlement offer, and failed to adequately advise Coxeter about other actions Glaser Weil took that favored Bisno over Coxeter.

Reger's complaint also included the following allegations concerning the relationship between Glaser Weil and Jackson DeMarco: "Jackson DeMarco had an undisclosed and preexisting relationship with [Patricia Glaser], arising from Heyman's past representation of [Patricia Glaser] in tax or estate planning matters, during his affiliation with Glaser Weil. . . . Heyman and [] Jackson DeMarco failed to disclose this preexisting relationship with [Patricia Glaser], such that Jackson DeMarco and Heyman would be unable to provide their complete and undivided loyalty to Coxeter, and to exercise independent judgment, when advising Coxeter regarding the actions of [Glaser Weil] in the [investor lawsuits]."

Based on the arbitration provision in its retainer agreement with Coxeter, Glaser Weil filed a petition to compel arbitration of Reger's claims. The same day, Jackson DeMarco filed a joinder in Glaser Weil's petition, asking the trial court to "order this matter and all parties to binding arbitration." Jackson DeMarco did not file its own petition to compel arbitration. Glaser Weil and Jackson DeMarco conceded Jackson DeMarco did not have an arbitration agreement with Coxeter, but argued Reger was equitably estopped to assert the lack of an arbitration agreement with Jackson DeMarco because his claims against the two firms were inextricably intertwined and inherently inseparable.

Reger opposed the petition and joinder, arguing he was not equitably estopped to assert the lack of an arbitration agreement with Jackson DeMarco, and therefore he could not be compelled to arbitrate his claims against that firm. Reger also argued the trial court should deny Glaser Weil's petition under section 1281.2(c) because his claims against Jackson DeMarco constituted pending litigation with a third party that

could result in conflicting rulings on a common factual or legal issue if those claims were not jointly litigated.

The trial court denied both Glaser Weil's petition and Jackson DeMarco's joinder based on section 1281.2(c). In its statement of decision, the court explained Glaser Weil entered into an enforceable arbitration agreement with Coxeter, but Jackson DeMarco had no arbitration agreement with Coxeter, and there existed a possibility of conflicting rulings on a common factual or legal issue if all claims were not heard together because Reger's claims arose out of the same transaction or series of related transactions. The court rejected Glaser Weil's and Jackson DeMarco's equitable estoppel argument because it found the two were "separate and unrelated law firm[s]" and Reger based his claims against them on the independent duties the two firms owed to Coxeter. This appeal by Jackson DeMarco followed.²

II

DISCUSSION

A. *Jackson DeMarco Failed to Establish Federal Law Applied*

As an initial matter, Jackson DeMarco argues the FAA governs the petition to compel arbitration and joinder. Jackson DeMarco, however, forfeited this argument because neither Jackson DeMarco nor Glaser Weil argued in the trial court that the FAA applied. (*Golden State Water Co. v. Casitas Municipal Water Dist.* (2015) 235 Cal.App.4th 1246, 1259 ["[appellant] has forfeited this argument by failing to raise it below"].) Moreover, Jackson DeMarco failed to meet its burden to establish the FAA applied.

² Glaser Weil separately appealed from the trial court's order denying its petition to compel arbitration. (*Reger v. Glaser Weil Fink Howard Avchen & Shapiro, et al.* (G052352.) We previously denied a motion to consolidate the two appeals, but set them for oral argument at the same time.

“The FAA ““is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary. . . .’ . . . ‘[I]n enacting [the FAA], Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.’”” (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 237-238 (*Carbajal*).) Its principal purpose ““is to “ensur[e] that private arbitration agreements are enforced according to their terms.”” (*Id.* at p. 238.)

The FAA applies to any “contract evidencing a transaction involving commerce” that contains an arbitration provision. (9 U.S.C. § 2; *Carbajal, supra*, 245 Cal.App.4th at p. 238.) “[T]he phrase ““involving commerce”” in the FAA is the functional equivalent of the term ““affecting commerce,”” which is a term of art that ordinarily signals the broadest permissible exercise of Congress’s commerce clause power.’ [Citations.] Accordingly, ‘although Congress’s power to regulate commerce is broad, it does have limits. . . . [A] relatively trivial impact on interstate commerce cannot be used as an excuse for broad regulation of state or private activities.’” (*Carbajal*, at p. 238.)

“Applying these principles, the United States Supreme Court has identified ‘three categories of activity that Congress may regulate under the commerce power: (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce and persons or things in interstate commerce, and (3) those activities having a substantial relation to interstate commerce.’ [Citations.] [¶] The party asserting FAA preemption bears the burden to present evidence establishing a contract with the arbitration provision affects one of these three categories of activity, and failure to do so renders the FAA inapplicable.” (*Carbajal, supra*, 245 Cal.App.4th at p. 238.)

Here, Jackson DeMarco presented no evidence to show how Coxeter’s retainer agreement with Glaser Weil to represent him in a California state court affected

one or more of these three categories of activities. Based on this complete lack of evidence, Jackson DeMarco failed to show the FAA applied and we therefore decide this appeal under California law.

B. *Equitable Estoppel Did Not Prevent Reger From Opposing Arbitration Based on the Absence of an Arbitration Agreement Between Coxeter and Jackson DeMarco*

Jackson DeMarco argues Reger was equitably estopped from opposing arbitration because his claims against Jackson DeMarco and Glaser Weil were inextricably intertwined and arose out of Glaser Weil's representation of Coxeter under the Glaser Weil retainer agreement, which included a broad arbitration agreement. Jackson DeMarco's argument misconstrues the governing legal standard and Reger's claims.³

Arbitration is a matter of contract, and a person generally ““must be a party to an arbitration agreement to be bound by it or invoke it.”” (*DMS Services, LLC*

³ Jackson DeMarco solely relies on the doctrine of equitable estoppel to challenge the trial court's order. It does not address the trial court's reliance on section 1281.2(c) or how that statutory provision relates to Jackson DeMarco's equitable estoppel argument. Section 1281.2(c) grants trial courts the discretion to deny arbitration on claims otherwise subject to an arbitration agreement when a party to the agreement also is involved in pending litigation with a third party who did not agree to arbitration and the third-party litigation creates the possibility of conflicting rulings on a common factual or legal issue. (§ 1281.2(c); *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 967 (*Acquire II*).)

As explained below, a nonsignatory to an arbitration agreement may enforce an arbitration agreement in certain circumstances, including when a signatory is equitably estopped to assert the absence of an arbitration agreement with the nonsignatory. When a nonsignatory has standing to enforce an arbitration agreement, the nonsignatory is not a third party under section 1281.2(c) and the trial court lacks discretion to deny arbitration based on that statutory provision. (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 706 (*Molecular Analytical*).) By asserting Reger is equitably estopped to deny Jackson DeMarco's standing to enforce the arbitration agreement, Jackson DeMarco impliedly challenges the trial court's decision under section 1281.2(c).

v. Superior Court (2012) 205 Cal.App.4th 1346, 1352 (*DMS Services*).) Although California has a strong public policy favoring arbitration as a relatively quick and inexpensive method of dispute resolution, “““there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate. . . .””” (Ibid.)

The doctrine of equitable estoppel is an exception to this general rule that allows a nonsignatory to enforce an arbitration agreement “where, for example, a signatory plaintiff sues a nonsignatory defendant for claims that are based on an underlying contract. In such instance, the plaintiff may be equitably estopped to deny the nonsignatory defendant’s right to enforce an arbitration clause that is contained within the contract that the plaintiff has placed at issue.” (*Marenco v. DirecTV LLC* (2015) 233 Cal.App.4th 1409, 1417.)

The purpose of the doctrine is ““to prevent a party from using the terms or obligations of an agreement as the basis for his claims against a nonsignatory, while at the same time refusing to arbitrate with the nonsignatory under another clause of that same agreement.” [Citation.] Application of the doctrine in a proper case is not unfair to signatory plaintiffs resisting arbitration: Not only have such plaintiffs ‘decided the theories on which to sue’ the nonsignatory, they also have ‘consented to arbitrate the claims against [the signatory defendant] anyway.’” (*JSM Tuscan, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1238 (*JSM Tuscan*).)

“[T]he sine qua non for application of equitable estoppel as the basis for allowing a nonsignatory to enforce an arbitration clause is that the claims plaintiff asserts against the nonsignatory must be dependent upon, or founded in and inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause.” (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 217-218 (*Goldman*).) “[M]erely ‘mak[ing] reference to’ an agreement with an arbitration clause is not enough. Equitable estoppel applies ‘when the signatory to a written agreement

containing an arbitration clause “must rely on the terms of the written agreement in asserting [its] claims” against the nonsignatory.” (*Id.* at p. 218.)

“In *any* case applying equitable estoppel to compel arbitration despite the lack of an agreement to arbitrate, a nonsignatory may compel arbitration only when the claims against the nonsignatory are founded in and inextricably bound up with *the obligations imposed by the agreement containing the arbitration clause*. In other words, allegations of substantially interdependent and concerted misconduct by signatories and nonsignatories, standing alone, are not enough: the allegations of interdependent misconduct must be founded in or intimately connected with the obligations of the underlying agreement.” (*Goldman, supra*, 173 Cal.App.4th at p. 219.)

“Because equitable estoppel applies only if the plaintiffs’ claims against the nonsignatory are dependent upon, or inextricably bound up with, the obligations imposed by the contract plaintiff has signed with the signatory defendant, [courts must] examine the facts alleged in the complaint[to determine whether the doctrine applies].” (*Goldman, supra*, 173 Cal.App.4th at pp. 229-230.) Whether the doctrine of equitable estoppel applies generally is a question of fact we review under the substantial evidence standard, but we review the question *de novo* when, as here, the facts are undisputed because they are limited to the allegations of the plaintiff’s complaint. (*Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1716; see *Molecular Analytical, supra*, 186 Cal.App.4th at p. 708.)

For example, in *Goldman*, the Court of Appeal concluded the doctrine did not apply because the signatory plaintiffs’ complaint against the nonsignatory defendants “[did] not rely on or use any terms or obligations of the . . . agreements as a foundation for their claims.” (*Goldman, supra*, 173 Cal.App.4th at p. 218.) There, the plaintiffs sued their former accountants, lawyers, and investment advisers for developing a fraudulent tax shelter scheme that resulted in losses for the plaintiffs. One step in the scheme included establishing a limited liability company governed by an operating

agreement that included a broad arbitration provision. The plaintiffs and their investment advisors signed that agreement and became members of the limited liability company, but the accountants and lawyers did not. (*Id.* at p. 213.) The accountants and lawyers nonetheless moved to compel arbitration based on the arbitration provision in the operating agreement, arguing the plaintiffs were equitably estopped to raise the accountants' and lawyers' status as nonsignatories because the plaintiffs' claims were founded on the operating agreement and alleged "interdependent and concerted misconduct" by the nonsignatory accountants and lawyers, and the signatory investment advisors. (*Id.* at pp. 216-217.) The trial court denied the motion to compel arbitration and the Court of Appeal affirmed, explaining the doctrine of equitable estoppel did not apply because the plaintiffs' "allegations depend solely on the actions of [the accountants and lawyers], not on the terms of the operating agreement for their success." (*Id.* at p. 230; see *DMS Services, supra*, 205 Cal.App.4th at pp. 1354-1355 [equitable estoppel doctrine did not apply because plaintiff's claims against nonsignatory defendant did not rely on any provision in agreement containing arbitration provision]; *Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 21-22 [same].)

Here, equitable estoppel likewise does not apply to prevent Reger from asserting Jackson DeMarco's status as a nonsignatory to Glaser Weil's retainer agreement and its arbitration provision. Reger's claims against Jackson DeMarco are not dependent upon, founded in, or inextricably intertwined with the contractual obligations of the Glaser Weil retainer agreement. Reger sued Jackson DeMarco for legal malpractice and breach of fiduciary duty based on its breach of the separate duties Jackson DeMarco owed Coxeter as his independent counsel. The Glaser Weil retainer agreement is not the source of any duty Reger claims Jackson DeMarco breached.

The Glaser Weil retainer agreement and Glaser Weil's representation of Coxeter under that agreement may provide the context for some of the misconduct in which Reger alleged Jackson DeMarco engaged. For example, Reger alleged Jackson

DeMarco failed to advise Coxeter that Glaser Weil was favoring Bisno's interests over Coxeter's interest in Glaser Weil's joint representation of Bisno and Coxeter in the investor lawsuits. But Reger does not claim Jackson DeMarco had or breached any obligation under the Glaser Weil retainer agreement, that Jackson DeMarco is liable for Glaser Weil's breach of any contractual obligations imposed by the Glaser Weil retainer agreement, or even that Jackson DeMarco induced or otherwise caused a breach of the Glaser Weil retainer agreement. Jackson DeMarco does not point to a single allegation in Reger's complaint that relies on the terms of the Glaser Weil retainer agreement to support its claim against Jackson DeMarco.

In the words of the *Goldman* court, "[Jackson DeMarco] simply omit[s] the necessary central core of the standard: the plaintiff's allegations must rely on or depend on "the terms of the written agreement" [citation], not simply on the fact that an agreement exists.'" (*Goldman, supra*, 173 Cal.App.4th at p. 231.) Indeed, although the Glaser Weil retainer agreement "may play a role in the ultimate outcome of this suit, it is not a part of [Reger's] causes of action. . . . In this case, [Reger is] not trying to "have it both ways" [by seeking to hold Jackson DeMarco liable pursuant to duties imposed by the Glaser Weil retainer agreement, but at the same time denying applicability of the agreement's arbitration clause] because [Reger is] not relying on the [Glaser Weil retainer agreement] to hold [Jackson DeMarco] liable. As a result, equitable estoppel does not permit [Jackson DeMarco] to enforce the arbitration agreement.'" (*Ibid.*)

Jackson DeMarco's argument that Reger's claims against Jackson DeMarco and Glaser Weil are inextricably intertwined and share common factual and legal issues conflates the standard for determining whether section 1281.2(c) applies, and the standard for determining whether a signatory is equitably estopped to oppose arbitration with a nonsignatory. Section 1281.2(c) applies when a party to a dispute covered by an arbitration agreement also is involved in pending litigation with a third party and that creates the possibility of a conflicting ruling on factual or legal issues common to both

proceedings. (§ 1281.2(c); *Acquire II*, *supra*, 213 Cal.App.4th at pp. 967-968.)

Section 1281.2(c) allows the court to avoid conflicting rulings by either deciding the two set of claims together, or deciding one set of claims before the other. (*Acquire II*, at p. 978; *Abaya v. Spanish Ranch I, L.P.* (2010) 189 Cal.App.4th 1490, 1497.)

In contrast, equitable estoppel applies when a signatory's claims against a nonsignatory are dependent upon, founded in, or inextricably intertwined with the obligations of the agreement containing the arbitration provision. (*Goldman*, *supra*, 173 Cal.App.4th at pp. 217-218.) Its purpose is to prevent a party from using the terms or obligations of an agreement as the basis for claims against a nonsignatory while simultaneously refusing to arbitrate with that nonsignatory under another clause of that same agreement. (*JSM Tuscany*, *supra*, 193 Cal.App.4th at p. 1238.) Whether Reger's claims against Jackson DeMarco share common issues or are inextricably intertwined with Reger's claims against Glaser Weil is irrelevant to determining whether equitable estoppel applies. The determinative factor in the equitable estoppel analysis is the relationship between Reger's claims against Jackson DeMarco and the terms of the Glaser Weil retainer agreement, not the relationship between Reger's claims against Jackson DeMarco and his claims against Glaser Weil. (See *DMS Services*, *supra*, 205 Cal.App.4th at p. 1357 ["commonality of issues is a far cry from claims grounded in, and 'inextricably intertwined with,' the arbitration agreement"].) The required relationship between Reger's claims against Jackson DeMarco and the Glaser Weil retainer agreement is lacking, and the trial court therefore properly concluded equitable estoppel did not apply.⁴

⁴ Reger contends Jackson DeMarco's joinder in Glaser Weil's petition to compel arbitration was inadequate to establish Jackson DeMarco's right to any relief even if the equitable estoppel doctrine otherwise applied. We do not address this contention or the adequacy of Jackson DeMarco's joinder because we conclude the trial court properly determined equitable estoppel did not apply.

III

DISPOSITION

The order denying Glaser Weil's petition to compel arbitration and Jackson DeMarco's joinder is affirmed. Reger shall recover his costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.